Broadly speaking the tendency of the decisions is to announce the doctrine that an infirmity in the health of either party rendering marriage dangerous to either is a good defense to an action for a breach of the contract. This rule is the result of a public policy which declares that it is better to disappoint the expectations of a young woman than to increase the population of our county poor-houses and insane asylums. The contrary doctrine is the product of a strict adherence to the "Act of God" rule which says that a breach of contract is not excusable unless the performance thereof is rendered impossible by some unforeseen circumstance which was not in the contemplation of the parties at the time of the making of the contract. This rule requires actual physical impossibility of performance. POLLOCK in his work on CONTRACTS, p. 546 (3rd Am. Ed.), in speaking of the application of the "Act of God" rule says, "The question is not whether there is an absolute impossibility" of performance "but what is the true meaning of the contract." The application of POLLOCK's doctrine sustains the majority of the cases cited. A. A. M.

THE EFFECT OF A JUDGMENT AGAINST ONE JOINT TORT-FEASOR.—In the recent case of *Ketelson* v. *Stilz et al.*, 111 N. E. 423, the plaintiff sued one McCleay, a joint tort-feasor with defendant, recovered a judgment, and caused an execution to be issued against McCleay on this judgment which execution was returned *nulla bona*. The plaintiff later sued defendant, the other joint tort-feasor, who sets up that the former judgment and execution constitute a bar to this suit. The Supreme Court of Indiana held that the judgment and execution issued against McCleay were not a bar to an action against the defendant, the other tort-feasor.

There seem to be three rules in regard to the effect of a judgment against a tort-feasor on the liability of a co-tort-feasor: (1) the rule as laid down in England is that a judgment in an action against one of several joint tort-feasors is a bar to an action against the others for the same cause, although such judgment remains unsatisfied. *Brown* v. *Wootton* (1606) Cro. Jac. 73; *Brismead* v. *Harrison* (1872) L. R. 7 C. P. 547, 41 L. J. C. P. N. S. 190. The reason for these cases is that if it were not held to be a defense, the effect would be to encourage any number of vexatious actions whenever there happened to be several joint wrong-doers. Too, judgment having been recovered against one or more of the wrong-doers, and damages assessed, if that judgment afforded no defense, the plaintiff might proceed to trial against another of them, and the second jury might assess a different amount of damages, etc. (2) Numerous authorities in the United States adhere to the doctrine that the plaintiff may have separate actions and recover judgments against each of the joint tort-feasors, but then, after having the privilege of electing *de melioribus damnis*, his taking out execution extinguishes his right to proceed against the others, although he failed to obtain satisfaction. *Boardman* v. *Acer*, 13 Mich. 77, 87 Am. Dec. 736; *Kenyon* v. *Woodruff*, 33 Mich. 310; *Criner* v. *Brewer*, 13 Ark 225; *Davis* v. *Scott*, 1 Blackf. (Ind.) 169; *Fleming* v. *McDonald*, 50 Ind. 278,

19 Am. Rep. 711; *Ashcraft* v. *Knoblock,* 146 Ind. 169, 174, 45 N. E. 69; *Mathews* v. *Menedger,* 2 McLean, (U. S.) 145. (3) The American rule sustained by the great weight of authority is that nothing short of full satisfaction or its equivalent can make good a plea of former judgment in tort, offered as a bar in an action against another joint tort-feasor who was not a party to the first judgment. The cases from the various states are collected in a note to the case of *Blackman* v. *Simpson,* 120 Mich. 377, as reported 58 L. R. A. 410.

The English doctrine, set out in (1) supra, has been followed by a few decisions in the United States. In Virginia, in 1808, the court held that in an action of trespass brought against one defendant, he may plead, in bar to a recovery, a judgment obtained against another defendant, for the same cause of action, in another suit. *Wilkes* v. *Jackson,* 2 Hen. & M. (Va.) 355. This decision was entirely sustained in *Petticolas* v. *Richmond,* 95 Va. 456, 28 S. E. 566. Rhode Island adhered to the English rule in *Hunt* v. *Bates,* 7 R. I. 217, 82 Am. Dec. 592, but that state was brought nearer to the American rule by the later case of *Parmenter* v. *Barstow,* 21 R. I. 410, 43 Atl. 1035. The rule set out in (2) supra, seems illogical. "If the mere election to pursue one trespasser were binding on the plaintiff as a release of all co-trespassers, it seems difficult to understand why that election is not as obvious when the suit has been prosecuted to final judgment as when the plaintiff takes the first step towards its enforcement. If, on the other hand, such election in no way involves the several causes of action against the other trespassers prior to issuing an execution, it is difficult to perceive why or how that event necessarily involves them." FREEMAN, JUDGMENTS, § 236. The principal case does away with this rule in Indiana, but Michigan still adheres to that rule. The rule set out in (3) supra, accepted by the great weight of American cases, appears to be based upon most logical and equitable principles. The liability of tort-feasors is joint and several. The injured party has the right to pursue them jointly or severally at his election, and recover separate judgments; but the injury being single, he may recover but one compensation. Therefore, he may elect *de melioribus damnis* and issue his execution accordingly, but if he obtains only partial satisfaction he has not precluded himself from proceeding against another co-tort-feasor; his election of the first judgment concluding him only as to the amount he may receive, and whatever has been recovered must apply *pro tanto* upon his further recovery. The plaintiff can have but one satisfaction for each trespass, whether he has recovered several judgments or one, and so very little hardship can result from this rule, while a great amount of justice can result from it. H. B. S.

WAIVER IN INSURANCE CONTRACTS.—Waiver is defined as the "intentional relinquishment of a known right." The doctrine of waiver was brought into use because of the feeling of the courts toward forfeitures and the principle in earlier times was most frequently illustrated and applied in